

**DECISION OF THE GISBORNE DISTRICT COUNCIL**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicants:</b>	NZHG Gisborne Limited
<b>RM reference:</b>	LU2023-112105-00
<b>Location:</b>	556 to 560 Aberdeen Road, Gisborne
<b>Proposal:</b>	An application under Section 88 of the Resource Management Act 1991 (RMA) for land use and subdivision consent for a 12 Unit residential development, site works, access (Joint owned access lot) and on-site carparking arrangements.
<b>Type of Consent:</b>	Subdivision and Land Use
<b>Legal Description:</b>	Lot 2 DP 1585, Part Lot 1 DP 1585 and Lot 1 DP 1817
<b>Operative District Plan Zoning:</b>	General Residential
<b>Activity Status:</b>	Discretionary Activity (Overall)
<b>Notification:</b>	29 May 2024
<b>Commissioner</b>	Dr Lee Beattie
<b>Site Visit:</b>	18 & 20 Sept 2024
<b>Date:</b>	2 Dec 2024
<b>Decision:</b>	<b>CONSENT IS REFUSED</b>

**IN THE MATTER OF** an application by NZHG Gisborne Limited to application under Section 88 of the Resource Management Act 1991 (RMA) for land use and subdivision consent for a 12 Unit residential development, site works, access (Joint owned access lot) and on-site carparking arrangements at 556 to 560 Aberdeen Road, Gisborne.

Council File: LU2023-112105-00

**Hearing Date:**

Thursday 19 Sept 2024 in Gisborne

**Appearances for the Applicant:**

Ms Lara Blomfeild: Legal Counsel;

Ms Portia McKenzie: applicant;

Mr Sol Atkinson: Architect;

Mr Matheus Boaretto: Traffic Engineering;

Mr Johan Ehlers: Civil Engineering;

Mr Jon Farren: Noise;

Jason Strong: Contaminated Soils; and

Ms Phillipa Beachen: Planner.

**Appearances for Submitters:**

Ms Susie Taylor: 2 Asquith Street;

Ms Bronwyn Kearns: 3 Asquith Street;

Ms Jaclyn Findon: 5 Asquith Street;

Mr Trevor and Mrs Caroline Hawkins: 562 Aberdeen Road;

Mr Terrence Corneluis: 4 Asquith Street; and

Mr Ron Clancy: 6 Asquith Street.

**Appearances for the Gisborne District Council**

Ms Sarah Exley: Senior Consents Planner;

Ms Awhina White: Consents Manager;

Mr Shane McGhie: Principal Policy Planner:

Mr Robin Beale: Development Engineer;  
and

Dr Dave Bull, Contaminated Land.

The hearing was closed on 14 Oct 2024

**DECISION OF GISBORNE DISTRICT COUNCIL  
HEARING COMMISSIONER DR LEE BEATTIE  
APPOINTED PURSUANT TO SECTION 34A OF THE RMA**

**INTRODUCTION, BACKGROUND AND PROPOSAL**

1. Dr Lee Beattie (Chair) has been granted delegated authority by the Gisborne District Council ('the Council') under s.34A of the Resource Management Act 1991 ('the RMA') to hear and determine the application by NZHG Gisborne Limited ('the Applicant') for land use and subdivision consent for a 12 Unit residential development, site works, access (Joint owned access lot: JOAL) and on-site carparking arrangements at 556 to 560 Aberdeen Road, Gisborne.
2. This application was heard over a day but was followed by a very similar application from the same applicant in a different location within the district (99A Stanley Road), where many of the issues explored here were also similar to those explored as part of that hearing.
3. The proposal has been described in detail within Ms Beachen's's AEE supporting the application. In essence, the applicant seeks resource consent (Land Use and subdivision) to construct 12 one to two story residential units, with 2 being stand-alone units and the others being in duplex forms. All the residential units would be serviced by a single joint owned accessway (JOAL) from Aberdeen Road, save proposed lot 2 would have its own vehicle access onto Aberdeen Road. Resource consent is also required under the National Environmental Standard for Assessing and Managing Contaminants on site, which I understand from Dr Bull (Council's Contaminated Land expert) relates to the use of lead based paint, which as I understand from him, is potentially an issue across the District, and the country generally.
4. The application site is located at 556 to 560 Aberdeen Road, Gisborne. The site and the surrounds have been described in detail in Section 1.4 of Ms Exley's s.42A report. There was no real disagreement between the parties over the location description and I have therefore adopted Ms Exley's description for the purposes of my decision. However, I consider it appropriate for me to acknowledge a few factors about the site (area of the proposed new building platforms and accessway and beyond) which I feel are relevant to my consideration of this application.
5. The site and its surrounding area are characterised by single story buildings on large sites with significant and spacious front yards, which is also common through Gisborne area and reflects a very 'suburban' and low-density style of urban form. The only two-story elements I noticed in the wider but localised environment, was the two-story 'terrace' style building located at 551 Aberdeen Road which I understand contains three residential units. There was also industrial buildings just beyond at 537 Aberdeen Road which I understand now is used partly as a community and sporting centre. There was also a significant tree present on site. During my site visit on the afternoon (about 5.00pm on 18 Sept 2024) and before the hearing I noticed there appears to be a high level of on street car parking spaces available for use in Aberdeen Road. This was also the case when I revisited the site at 2.00pm on Friday 20 Sept 2024. During these two site visits I gained a good appreciation of the property and the wider environment, including from the submitters' properties.

6. In reaching this decision I have considered:

- (i) The application, the AEE and all supporting document and plans;
- (ii) The Council officer's (Ms Exley) s.42A report, together with the supporting reports attached;
- (iii) The pre-circulated evidence from the Applicant;
- (iv) The written submissions from the submitters to the application;
- (v) The submissions (from the applicant's Legal Counsel Ms Lara Blomfield) and evidence provided at the hearing by all the parties;
- (vi) The responses to my questions during the hearing process from all parties;
- (vii) The applicant's right of reply;
- (viii) My site visits;
- (ix) The relevant provisions of the Operative Tairāwhiti Resource Management Plan (District Plan Section);
- (x) National Environmental Standard for Assessing and Managing Contaminants; and
- (xi) National Policy Statement on Urban Development 2020.

7. I would like to thank all parties for the professional and courteous way that the hearing was undertaken. Finally, I would like to thank Mr Mac Burgess (Council's hearing Advisor) for all his assistance and help during the hearing process.

#### **NOTIFICATION, SUBMISSIONS & STATUTORY MATTERS**

8. The application was publicly notified on 29 May 2024 with submissions closing on 27 June 2024. Ten submissions were received all in opposition. A summary of this submission is set out in section 4 of Ms Exley's s.42A report.
9. The site is located within the Tairāwhiti Resource Management Plan's (TRMP) General Residential Zone. Acknowledging that the TRMP is Unitary Plan, covering all the region's resource management plans, including the Regional Policy Statement (RPS), regional coastal plan, regional plan and district plan.<sup>1</sup> There was little reference made to the Regional Policy Statement section of the TRMP, with the planners (and other experts) focusing their consideration on the relevant District Plan sections of the TRMP, a point I agree with. As a result, I have concentrated my consideration on the relevant District Plan provisions of the TRMP.
10. There was no disagreement between any of the parties over the consents required (being a Discretionary Activity overall), or over the relevant District Plan's objectives and policies (the General Residential, Infrastructure, Works, and Service Issues and Subdivision sections) to this application and accordingly, these have been adopted for my decision. In saying this, there was some discussion about the issue of bundling of the land use and subdivision consent together and the timing of two. In doing so, I raised the recent Environment Court decision in *Protect*

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<sup>1</sup> Gisborne District Council 2024, <https://www.gdc.govt.nz/council/tairawhiti-plan/chapters-and-appendices>, viewed 4 Nov 2024

*Aotea v Auckland Council* during the course of the hearing with the parties.

11. Ms Lara Blomfield in her right of reply suggested her interpretation of the appropriate way for me to apply this to my consideration of the application<sup>2</sup>. In essence, she suggested that I should take a holistic approach to my assessment of the effects on the environment from the land use, subdivision and management of contaminated soils activities, especially in dealing with any conditions of consent that may be imposed, but these activities should not be bundled together as bundling could not override provisions of s.104C of the RMA<sup>3</sup>, as the Land Use activities were a Restricted Discretionary Activity and my areas of consideration for them must be limited to these matters covered in Rule DD1.6.1(17).<sup>4</sup> However, as she suggested, as did Ms Exley<sup>5</sup> there was still the issue surrounding the non-compliance with the District Plan's general provisions contained in Chapter C2 for the internal height to boundary, site coverage (for proposed lots 10 and 11) and vehicle access, including its width, and also servicing more than 10 residential units, which fell outside the assessment criteria of Rule DD1.6.1(17).
12. At this stage, I think it's appropriate for me to set out my view on this matter. With a combined land use and subdivision application there is always the question of which comes first, the land use or the subdivision. In this case, it seemed logical to me the Land Use consent element should come first for the building forms (given these were shown and applied for) and then consider the issues arising subdivision consent, as these impacts would result from the buildings activities themselves and sole subdivision application was not sought.
13. This approach would have removed the issue of the internal height to boundary infringements, as the impact of the building forms would then be taken from the external boundaries in the first instance. However, this would not remove the vehicle access or site coverage issues, a point I will cover below. In saying this, I would like to stress I have considered the application as proposed (a combined application, just in the logical fashion as I have set out below) including to a limited degree the impact of the internal height to boundary infringements. I am also conscious of Ms McKenzie's (applicant's) comments over their potential requirement with future social housing providers to deliver an integrated housing outcome (land use and subdivision).<sup>6</sup>
14. In moving forward and to resolve this issue, I agree with Ms Blomfield's approach to this, and find that I should consider the land use activities in accordance with Rule DD1.6.1(17) and it would not be appropriate to allow the District Plan's general provisions (Chapter C2) infringements to 'open up' the whole land use consent application to issues beyond these matters of discretion set out in Rule DD1.6.1(17).<sup>7</sup> As a result, I have considered the application in the following order:
  - The land use activities in accordance with Rule DD1.6.1(17);

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<sup>2</sup> Paragraph 21 of Ms Blomfield's right of reply dated 4 Oct 2024

<sup>3</sup> Paragraph 21.2 of Ms Blomfield's right of reply dated 4 Oct 2024

<sup>4</sup> Paragraph 22 of Ms Blomfield's right of reply dated 4 Oct 2024

<sup>5</sup> Page 2 of her Reporting Officers Hearing Notes dates 19 Sept 2024

<sup>6</sup> Ms McKenzie's responses to my questions during the hearing on 19 Sept 2024.

<sup>7</sup> Paragraph 27 of Ms Blomfield's right of reply dated 4 Oct 2024

- The infringements of the general provisions in Chapter C2 (internal height to boundary, site coverage (proposed lots 10 and 11) and vehicle access);
- The contaminated soils matter under the National Environmental Standard for Assessing and Managing Contaminants;
- Any outstanding subdivision matters, including any issue under s.106 relevant to this consent application;
- Assessment of the relevant District Plan policy frameworks and the NPS:UD; and
- A considering the application in the round, positive effects and reference to Part 2 of the RMA if required.

15. While it was clear to me that the application could, or was to be used for social housing, this appeared not to feature as a major element of the evidence I received on the application. I explored this during the hearing and while all the planning witnesses agreed social housing would be a s.5 matter<sup>8</sup> (to differing degrees) under the RMA this did not form an integral part of their assessment on the application. They chose to focus on the impacts of the activities (housing) themselves. This was also reflected in the legal submissions I received, and through Ms McKenzie's comments to me where she suggested they (applicant) may choose to retain the ownership themselves, either as social housing or not. As a result, I have considered the application as it was presented to me with the 'flavour' of social housing attached as set out in the applicant's AEE.
16. Now turning to the issue of car parking and the relevant provisions under the National Policy Statement: Urban Development (NPS:UD). There was no disagreement between any of the parties that the Council is a Tier 3 Council under the NPS: UD. Nor was there any disagreement that the NPS: UD required councils to remove their minimum car parking standards from their district plans. In this regard, I found McGhie's (Council's Principal Policy Planner) evidence very helpful<sup>9</sup> where he confirmed that the Council had removed the minimum car parking standards from the District Plan and there was no requirement to provide car parking for this type of development in the District. This point was also highlighted to me by Ms Blomfield<sup>10</sup>. I also agree (as discussed above) with her (Ms Blomfield) that it would not be logical for the failure to comply with two general standards around site coverage and vehicle access to 'open up' the issue of on-site car parking beyond the areas of discretion for the Land Use activity under Rule DD1.6.1(17).
17. I acknowledge there were significant discussions between the planners (both Ms Exley and Ms Beachen) over whether on-site (and the level of) car parking would form part of a well-functioning urban environment required under the NPS: UD's Objective One and supporting

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<sup>8</sup> Ms Beacham and Mr McGhie, with Ms Exley suggesting she did not have sufficient experience to answer this question in a meaningful (Page 7: Officers Hearing Notes dated 19 September 2024). I thank Ms Exley for her honest and professional response.

<sup>9</sup> In response to my questions.

<sup>10</sup> Paragraph 27 of Ms Blomfield's right of reply dated 4 Oct 2024

policies in a locations like Gisborne, given the lack of meaningful public transport in the district.<sup>11</sup> Much of this discussion was a direct result of my questioning and exploring of this matter with them given the significant weight that Ms. Exley had given to this issue in her s.42a report. An issue I will explore in more detail below.

18. While I can see some logic and practicality to this argument, this is not the approach taken by the NPS: UD, nor the Council's (to give effect to the NPS: UD<sup>12</sup>) decision to remove minimum car parking standards from the District Plan. As a result, I find it difficult to explore the issue of on-site car parking in any real and meaningful way given the policy approach expressed in the NPS:UD and the Council's own plan change. As I will explore in detail below, the applicant could and would be entitled to apply for a car free development (Land Use consent) and I do not agree a general provision (in C2.1.7.1) surrounding vehicle access to a site should be able to 'override' direction given in NPS, especially given the age of the District Plan section of the TRMP, which I understand from Mr McGhie dates from 1997. This would not be logical and would not represent up-to-date national planning policy expressed in the NPS: UD.

## LEGAL SUBMISSIONS & EVIDENCE

19. I had the benefit of Ms Exley's s.42A report which was circulated prior to the hearing and taken as read. Ms Exley recommended refusal of consent, with the rationale for this approach set out in her report. She maintained this view at the close of the hearing and which was confirmed in her subsequent hearing notes she provided to me dated 19 Sept 2024. In essence, she was of the view that the scale, nature and design of the residential development compromises the amenity values and character of the surrounding properties, including the adverse effects arising from the internal accessway design and additional traffic generation on the roading network, and the proposal was inconsistent with the objectives and policies of the TRMP.<sup>13</sup>
20. Ms Exley's report was supported by a number of internal and external expert's reports, covering development engineering, geotechnical issues, three waters, land use policy, compliance and monitoring and contaminated land matters. These experts are listed at paragraph 4 of Ms Exley's s.42a report. Finally, I would like to acknowledge the comprehensive and detailed nature of Ms Exley's s.42a report.
21. Expert evidence from the Council officers, the applicant and the parties was pre-circulated and read before the hearing. I note that the following is a summary of the key issues raised and must be read in conjunction with the actual legal submissions, pre-circulated evidence and evidence presented at or after the hearing. To reduce repetition, I will concentrate on matters relating to the areas of contention between the parties. A full set of all the evidence is available at the Council's internet site, including the recordings from the hearing.

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<sup>11</sup> I was advised by Ms Exley that public transport stopped after 5:00 PM and this should not be seeing a criticism in any way.

<sup>12</sup> Answers to my questions from Mr McGhie

<sup>13</sup> Ms Exley's summary at page 2 of her s.42a report.



22. **For the Applicant**
23. **Ms Portia McKenzie** (applicant) provided me with an overview of how the applicant operates in terms of their development approach, social housing provision, and provided me with some examples from the District and other parts of the country for me to consider. I found this very helpful to explain the thinking and rationale behind the applicant's approach to the housing layout and design.
24. **Ms Lara Blomfield** (Counsel) provided me with detailed opening legal submissions addressing the application, including the changes undertaken since notification that were designed to address some of the matters raised in Ms Exley's s.42A report. She covered the design response and how this would mitigate the impacts on the adjacent properties, fall within the character of the surrounding environment and had included feedback from Kainga Ora's social housing urban unit for the successful provision of social housing. She explored in detail the matters in contention and in the matters in disagreement which I found very helpful in considering this application.
25. She then explored the proposal in terms of its relevant statutory process, a point as I've discussed above, that evolved during the hearing process. She then considered the impact on the adjacent properties in terms of privacy, shading, fencing and noise and addressed the issues of on-site car parking, vehicle access and servicing. She also considered the positive impacts of the proposal which provided for the efficient and effective use of the site. She considered the relevant impacts of the District Plan and the NPS:UD and how, based on Ms Beachen's (and others) evidence the application was appropriate in land use and policy terms.
26. Finally, Ms Blomfield provided me with a draft set of conditions should I be of a view to grant consent.
27. **Mr Sol Atkinson** (Architect) spoke to his evidence in chief (which was taken as read). He helpfully walked me through his design thinking for the proposal. He also explained how his design thinking was influenced by comments he had received from Kainga Ora social housing urban design team. He covered issues raised within the Section 42 report including issues surrounding the permitted baseline,<sup>14</sup> shading, visual privacy, daylight and sunlight access to the adjacent properties and how the proposed building forms would not adversely affect the adjacent properties residential amenity.
28. He then answered my questions regarding the style and typological approaches used and how, in his view, from an architectural point of view, they would relate positively to the streetscene. He also explored a range of similar developments within the District and how from an architectural point of view the application would not be out of character with the surrounding environment. Finally, we considered the existing tree on site and how to achieve the density and design response proposed it was not possible to retain this significant tree.
29. **Mr Matheus Boaretto** (Traffic Engineer) spoke to his evidence in chief (which was taken as

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<sup>14</sup> Acknowledging these issues were covered in far more detail within Ms Beachen's evidence, as is appropriate given these were planning issues, but she did rely on the very helpful architectural drawings provided by Mr. Atkinson to advance her professional opinion in this regard.

read). In doing so, he covered the traffic crash statistics and traffic engineering issues relevant to this section of Aberdeen Road (and beyond). He highlighted, that in his view, there was sufficient capacity within the existing roading network to accommodate this form of development and that the application would not generate any noticeable adverse traffic effects. He then considered the issues of vehicle access and considered that the width was appropriate given the level of vehicle movements likely to be generated by this level of development.

30. He covered the issues raised by the submitters, including the use of on street car-parking which I was of the view, that there was sufficient space available in this section of Aberdeen Road to accommodate any over flow carparking that may be generated from this development. He then addressed issues of sight lines and the need for parking bays. At this point, I would like to acknowledge that the issues of parking bays, while initially put forward by the Council as means to address overflow car parking, was not a practical option and was beyond the applicant's ability to address given it would be located within the road reserve, a point confirmed by Mr Beale (Council's Development Engineer) and I have not considered this matter further.
31. **Mr Jason Strong** (Contaminated Soils) spoke to his evidence in chief (which was taken as read). He explained to me the discovery protocol the applicants were proposing to use and how this would address any on site contaminated soil issues. We explored the issue of where the contaminated materials would go, and he advised, as he set out in his evidence in chief, that the Wairoa Landfill confirmed their willingness to accept the material. He then addressed some issues raised by Dr Bull about his methodological approaches and confirmed that he was confident in the way he had undertaken his assessment and that the appropriate protocols were in place to address the contaminated soil issue.
32. As it transpired through the course of the hearing it appeared to me that Dr Bull and Mr Strong did come to an agreement over how this contaminated soil issue should be addressed, as I will discuss below for this site.
33. **Mr Johan Ehlers** (Civic Engineering) spoke to his evidence in chief (which was taken as read). He maintains his view that the site could be adequately serviced in terms of wastewater and water supply and that any stormwater and flooding issues could be adequately addressed through the appropriate use of conditions of consent. He then answered a number of my questions about the site and also addressed a number of the concerns expressed by the submitters about the potential flooding and stormwater issues. In his view there were no reasons to prevent granting consent in terms of servicing and engineering issues
34. **Mr Jon Harren** (Noise) spoke to his evidence in chief (which was taken as read). He confirmed his view that in the worst-case scenario the application would comply in terms of traffic and construction noise effects with the relevant District Plan standards, with the suggested conditions of consent (acoustic fencing during construction). He then also addressed issues raised by the submitters in terms of noise and maintained his view that there were no reasons in terms of noise which would warrant refusal of consent. This included the concerns by a number of submitters that increased density would also lead to increased noise impacts. He responded that he did not believe this was the case and the idea of increased intensification in this scenario would not lead to any further noise beyond what currently existed.

35. **Ms Phillipa Beachen** (Planner) spoke to her evidence in chief (which was taken as read). She addressed a number of issues that had come up during the hearing, outlined the proposed changes to the application, and responded to matters raised by the submitters. In doing so, she brought to my attention the age of the TRMP's District Plan section given this weight should be afforded to the NPS:UD which represented up-to-date planning policy. This has also influenced the Council's Future Development Strategy setting to address the District's future growth for the next 30 years.
36. She then covered the issue of density and how density in itself was not an adverse effect and how I should be guided by the effects generated from the proposal, and not by the level of density. She then, based on the helpful drawings from Mr Atkinson considered the permitted baseline argument for the site and in her view what would be a realistic and non-fanciful permitted development for the site using the existing District plan standards. This would enable the provision of 7 primary dwelling units, with 5 minor dwelling units resulting in a total of 12 dwelling units across the site and 27 bedrooms.<sup>15</sup>
37. Ms Beachen then spent some time in her evidence considering the issues of the impacts of yards setbacks, recession planes, outdoor amenity standards, site coverage, lot design and layout, noise, sunlight and daylight access, shading and building dominance upon the adjacent properties. In her view these were all acceptable in effects term and she did not support the view expressed by a number of the submitters that the proposal would be inconsistent with and adversely effect the existing character of the local environment. In her view it would be consistent with the existing character and also with the provisions provided for in the General Residential zone which provide for two story dwellings. She then considered the issues of traffic, including the proposed level of on site carparking, and the vehicle access and concluded that these were also acceptable in planning terms.
38. She provided me with a detailed consideration of the relevant District Plan policy provisions including those within the General Residential zone, Infrastructure, Works, and Service Issues and Subdivision sections of the District Plan and how the proposal was consistent with these relevant objectives and policies. In doing so she also highlighted there were a number of other developments within the local environment (551 and 557 Aberdeen Road) which had been approved at similar a level and intensity as currently proposed. Finally, she suggested that I should have regard to the NPS:UD, including policy one that sought to enable a wide range of different housing typologies which are required to contribute to a well-functioning urban environment.

#### **Submitters**

39. **Ms Susie Taylor** (2 Asquith Street) spoke to her submission and highlighted from her point of view, the impacts that the proposal would have on her property and the residential character and amenity generally. She highlighted the strong sense of community that existed in the area and how she did have some concerns about the potential use of the proposal for social housing. Finally, she was also concerned about the lack of car parking on site and the impact this would

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<sup>15</sup> Paragraph 27.4 of Ms Beachen's evidence in chief dated 3 Sept 2024

have on parking provision in the street.

40. **Ms Bronwyn Kearns** (3 Asquith Street) spoke to her submission and like Ms Taylor also expressed concerns about the loss of visual privacy to her property from the two-story buildings proposed, the impact on the neighbourhood character, car parking issues, and she also expressed concerns about the increased site coverage and stormwater issues that may rise from the level of density proposed. Finally, she also raised issues of social cohesion.
41. **Mr Trevor and Mrs Caroline Hawkins** (owners of 562 Aberdeen Road) spoke to their submission and highlighted in their view the proposal represented high density as opposed to the idea of low to medium density which they felt should be encouraged in this part of Gisborne. They also raised concerns about the building material proposed, the height of the fencing and the impacts the low level of on-site car parking would have on the existing street environment. Finally, they also raised concerns about sewage and whether there was sufficient capacity within the wastewater system to accommodate this level of development.
42. **Mr Terrence Cornelius** (: 4 Asquith Street) spoke to his submission and also acknowledged that he was new to the neighborhood and it was the existing neighbourhood's characteristics that encouraged him and his wife to buy their property. He supported and shared the views expressed by Ms Taylor and Ms Kearns about the impact the proposal could have upon his property and the local neighborhood generally.
43. **Mr Ron Clancy** (6 Asquith Street) spoke to his submission and raised similar concerns to the previous submitters as well as the potential adverse noise effects. With this he also provided me with a detailed analysis of the stormwater and potential flooding risks that the site faces and in doing so raised a number of questions about the engineering assessments, which in his view were problematic and needed further analysis. I would like to thank Mr. Clancy, just as I would like to thank all the submitters, for their detailed consideration of the issues and their candid and open responses to my questions. This was very helpful to my determination of the application.

#### **Council**

44. Ms Sarah Exley (Senior Consents Planner) provided me with her position on the application though her helpful hearing notes at the end of the hearing which maintained, as discussed above her view that the proposal was unacceptable in effects and land use policy terms for the rationale I have set out above. I raised the issue of how the Court of Appeals decision in Davidson v Marlborough District Council 2019 should be applied given the age of the District Plan and whether recourse to Part 2 under the RMA was open to me. On reflection she agreed this was the case but this did not change her view.
45. I would like to acknowledge at this stage that the issue of recourse to Part 2 did not feature heavily in the planners assessment of the application both for the council and the applicant. Both agreed that recourse was open to Part 2, as did Ms Blomfield should I require it<sup>16</sup>.
46. I explored the issues of car free developments with Ms Exley and what would be the appropriate

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<sup>16</sup> Paragraph 87 of Ms Blomfield right of reply dated 4 Oct 2024

level of car parking on site of an application of this type in the District. In doing so, she maintained her view that even though the District Plan had removed minimum car parking standards, a level of on-site car parking should be provided, especially given the nature of the activity proposed and to do otherwise could create adverse traffic effects. This view, in part, was based on the need to have vehicle access as part of the subdivision process. We also explored a range of issues surrounding the impact upon the neighbouring properties, the design and appearance of the dwellings and their impact on the streetscene and the impact of loss of the significant tree on site. I would like to thank Ms Exley for her candid answers to my questions and I found her responses very helpful to my consideration of the application.

47. **Mr Robyn Beale** (Development Engineer) had provided technical advice to Ms Exley's s42a report, which covered the appropriate level of on site car parking, vehicle access and the impact the proposal could have on the roading network including the impact upon on-street car parking. Mr. Beale covered the issue of onsite carparking and suggested that at least six more car parking spaces on site should be provided to meet the car parking demand. He acknowledged that the District Plan had removed the need for minimum car parking standards but this did not take away from his view that this development would still be required to meet its car parking demand on site and not have this accommodated in the street.
48. He then covered the issue of vehicle access, the width of the JOAL (with its walkway) and his concerns over the sightlines for safely entering and exiting the site. We also explored the issue of rubbish collection and what the impact of this would be for the 12 dwellings. I would also like to thank Mr Beale for his honest answers to my questions and his detailed experience and understanding of the District was clearly evident to me.
49. **Mr Shane McGhie** (Principal Policy Planner). As I've considered above, Mr McGhie provided me with a detailed understanding of the current policy position the Council is facing in terms of the approach to give effect to the NPS:UD, the likely staging of the District Plan review and how the Council's Future Development Strategy could potentially influence this review. He also answered my questions regarding the age of the District Plan (1997), with a number of amendments undertaken in the 2000's and that recourse to Part 2, should that be required, would be an appropriate response given the age of the District Plan.
50. Dr Dave Bull (Contaminated Land) joined us over MS Teams and talked to his analysis that informed Ms Exley's s42a report. As I have considered above by the end of the hearing it was clear to me that both Dr Bull and Mr Strong had come to an arrangement over how these issues could be appropriately addressed for the site. However, I found Dr Bull's analysis very interesting, and it highlighted a number of issues that the District (and other parts of New Zealand) will face generally given the nature of lead based paints and how these are addressed moving forward as these sites are either replaced or intensified. I thank Dr Bull for his analysis and response of my questions.

#### **Applicant's right of Reply**

51. Ms Blomfield provided me with her right of reply on 4 October 2024, which also included an updated scheme plan, an analysis of sightlines from the bedrooms to the adjacent submitters properties and a detailed analysis of the vehicle clearance movements based on Ms Beachen's

permitted baseline assessment. It also included the Commissioner's decision for 675 to 683 Gladstone Road (date 22 Jan 2022) for my consideration.

52. In her right of reply she provided me with her submissions on how I should consider the existing environment and in doing she highlighted the Hawthorn (Court of Appeal) and Wallace (High Court) cases, a point I agree with. She then considered the permitted baseline arguments and explained in her submission why Ms Exley had incorrectly applied this and how this had incorrectly influenced her view on the overall application.
53. Then she considered the impact of the proposal on the street scene and highlighted the ongoing discussions that had happened between the applicant and the Council and how the Hastings residential intensification guidelines would be an appropriate way of ensuring an appropriate urban design response. Then, as discussed above she considered the issues of bundling and how this should be applied to this application. Ms Blomfield then spent significant time considering the traffic access and on street car parking issues to address the concerns raised by Ms Exley and Mr Beale relying on the evidence of her traffic expert Mr Boaretto. In essence it was her submission that these issues could be adequately addressed and that the appropriate level of on-site car parking had been provided, just as the issues surrounding soil contamination could be addressed.
54. She then addressed the issues raised by the submitters including visual privacy, stormwater and flooding impacts, fencing and building materials and highlighted, based on the professional evidence, how these issues could be appropriately addressed. She explored the issues of the NPS:UD and how this should be applied and had become a relevant factor in terms of the 675 to 683 Gladstone Road Commissioner's decision and then she suggested that Part 2 was open to me should that be required.
55. Finally, it was her submission that the application, based on the evidence, was appropriate in effects and land use terms and was warranted consent subject to the conditions that Ms Beachen had proposed.

## **PRINCIPAL AREAS IN CONTENTION AND ASSESSMENT**

56. As discussed above, it was common ground between the parties that the overall application was a Discretionary Activity. However, as I have considered above, and to ensure I address the consents required correctly, proposed to use a six-step assessment approach to my evaluation of the application. That is, I will consider the application in this order:
  - The Restricted Discretionary Land Use activities in accordance with Rule DD1.6.1(17);
  - The infringements of the general provisions in Chapter C2;
  - The contaminated soils matter under the National Environmental Standard for Assessing and Managing Contaminants (RDA);
  - Any outstanding subdivision matters, including any issues under s.106 relevant to this consent application;

- Assessment of the relevant District Plan policy frameworks and the NPS:UD; and
- A consideration of the application in the round, including its positive effects and any reference back to Part 2 of the RMA that may be required.

57. It was clear to me that most of the issues relevant to this application were in contention to one level or another between the parties. In saying this, I will be guided by the quality and professional nature of the evidence I have received in evaluating the issues in contention. Before I move into my assessment, I do agree with Ms Blomfield that the 'Hawthorn' approach (as she suggests<sup>17</sup>) is the appropriate way to consider the receiving environment for this application, which I have done to include those activities which are permitted as of right. In this scenario the receiving environment would include residential developments at the appropriate density that meet supporting relevant development control standards, such as recession planes, yard setbacks, building length and site coverage controls. The District Plan does not have a height control and it seeks to control the bulk and massing effects of development through these development controls or performance standards.
58. Turning to the issue of the permitted baseline, it was clear the planners had a fundamental disagreement over this, and how it should be applied. As Ms Exley suggested the permitted baseline would be 8 or 9 units depending on the typology proposed<sup>18</sup> and Ms Beachen had suggested 7 dwellings with 5 minor residential units giving 27 bedrooms overall in configuration provided by Mr Atkinson. In my mind these discussions are not that helpful given the Council's decision to remove the need to provide car parking creating the opportunity for carefree development (land use) and both planner's analysis has been based on the need to provide on-site car-parking.
59. I think Ms Exley comes the closest to estimating what the permitted baseline would be when she suggests at Page 3 of her hearing notes dated 19 September 2024 that you could potentially have 12 residential units (depending on typology) on this site as a car free land use activity for residential development. As she also acknowledges, the need for consent under the District Plan's general provisions (Section C2) for vehicle crossing should not be relevant and wouldn't apply and this approach would actually allow for greater on-site amenity space. However, in my reading of the density standards (Rule DD1.6.1(2), if the units were attached side by side, with a car free development (no need for JOAL), it would enable 10 residential units (site area of 2,671 sqm / 205sqm = 10.684, rounded down to 10).
60. Finally, as a general observation it appears to me that a lot of time has been spent considering the impacts surrounding on-site car parking provisions. While I understand both the planners concerns (to differing degrees) over the need to provide on-site car parking, this seems at be odds with the national policy direction given in the NPS: UD and the Council's decision to remove on-site car parking requirements.

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<sup>17</sup> *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA

<sup>18</sup> Paragraph 56 of Ms Exley's leaves s42a report dated 26 August 2024.

DD1.6.1(17)matters

61. As consider the above, I have considered the Restricted Discretionary Activity Land Use consent aspect of this application against the assessment criteria as set out in Rule DD1.6.1(17). Rule DD1.6.1(17) limits my discretion to the areas of vibration, nuisance, building length, minimum site area, recession planes, site coverage, yard distances, infrastructure services and servicing, the gross floor area for an accessory building and the need for financial contributions. It seems to me that the last two parts of these assessment criteria are not relevant to this application as there are no accessory buildings proposed, nor did I receive an application or request for any financial contributions. In addition, the impact of the recession planes would be assessed from external legal boundaries as opposed to the internal ones, since these would follow as part of the subdivision consent. In saying this, even if these were to apply at the Land Use consent stage, the applicant owns the whole site, and would, as Ms Blomfield points out, simply give themselves consent for these infringements. The only issue would then be what is the impact of these internal infringements on the externally adjacent sites from increased bulk and massing enabled by these infringements.
62. Finally, it would also seem logical to apply the site coverage assessment as taken over the whole site.

*Vibration*

63. Turning to the issues surrounding vibration, while I acknowledge this issue was mentioned in passing by a number of the submitters, I am guided by the professional evidence of Mr Beale and Mr Ehlers and neither of them raised this as an issue of concern. I would agree with this approach and issues surrounding these potential adverse vibration effects (if any) could be appropriately addressed through the conditions that are imposed. As a result, I find that the application meets this limb of the assessment criteria.

*Nuisance*

64. In terms of nuisance effects, I did not receive any direct evidence from any of the witnesses, including the planners, under this category. However, looking at Rule DD1.6.1.1 (General Standards), sub section A (Nuisance) to seek guidance of the intention of this part of the assessment criteria, this issue appears to be restricted to the issues of nuisance from vehicles, including heavy vehicles, motor caravans and recreational vehicles. While I'm unsure if this is what is actually intended, it would appear to me to be 'drawing a long bow' to include wider ranging amenity effect issues that could arise on adjacent properties under this part of the assessment criteria. In my experience the issues surrounding nuisance predominantly relates to noise effects (nuisance from) and the impacts of outdoor activities on the adjoining properties. In this regard, I favoured the evidence of Mr Farren and find that the impacts from noise generated from this proposal would be consistent with both the minimum District Plan standards for noise and would also be in line with what would be expected by further permitted residential development on this site, or the impacts from further intensification<sup>19</sup>. As a result, I find that the application meets this limb of the assessment criteria.

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<sup>19</sup> Paragraph 12 of Mr Farren evidence in chief dated 2 Sept 2024



### *Building Length*

65. In my reading of both of the planners' evidence there appears little discussion about the impacts of the building length as an individual discussion point. However, it is covered in other parts of their evidence where they talk about visual privacy, visual dominance and the impact of the buildings form on the adjacent properties. In my view, the building length control forms part of the overall package of development controls or performance standards that seek to address the overall impacts of the bulk and massing of buildings on the site to ensure an acceptable level of amenity (sunlight and daylight access, visual privacy, overlooking and visual dominance) is provided for the adjacent sites. With this, as Ms Exley sets out, the District Plan does not seek to control height and seeks to control bulk and massing through yard setbacks, building length and recession plane controls to define and enable an acceptable level of amenity that can be expected to be provided for adjacent properties.
66. As I will consider below, the application complies with the relevant District Plan yard setbacks and the recession plane controls. However, this still leaves the question of building dominance and the combined impact of building bulk and mass and how this relates to the adjacent sites. While I accept Ms Beachen's view<sup>20</sup> and Mr Atkinson's<sup>21</sup> views on this matter, who are of the view that these issues have been adequately addressed by the articulation and breaking up of the building forms and though compliance with the yard setbacks and the recession plane controls, I favour with Exley's<sup>22</sup> view on this matter and believe that this will create unacceptable impacts in terms of the number of built forms and their visual dominance impacts on the adjacent properties in Asquith Street and these impacts have not been mitigated by the landscaping or fencing.
67. As I will consider below, this view must be seen in light of my discussion over the issues of site coverage and density. As I will consider below, had the applicant sought to reduce the level of density by one or two units and changed the orientation of these towards the Asquith Street property boundaries, I may have come to a different view. As a result, I find that the application does not meet this limb of the criteria.

### *Recession Planes*

68. The application complies with the District Plan's recession plane controls on the site's external boundaries<sup>23</sup>. I accept that the height to boundary control or recession plane controls are part of a wider package seeking to control the bulk and massing of the dwelling and their associated impact on the adjoining property. In this case the proposal meets these controls. I agree with Ms Beachen's<sup>24</sup> and Mr Atkinson's view on this matter and find that the design and layout of the building forms, including their distance set back from the common boundaries, would provide an acceptable level of sunlight and daylight access, visual privacy and the prevention of overlooking effects to the adjacent properties, especially in Asquith Street. As a result, I find

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<sup>20</sup> Paragraph 84 of Ms Beachen's evidence in chief dated 3 Sept 2024

<sup>21</sup> Paragraph 39 of Mr Atkinson's Evidence in Chief dated 2 Sept 2024

<sup>22</sup> Final page of Ms Exley's Hearing Notes dated 19 September 2024

<sup>23</sup> Paragraph 106 of Ms Exley's s.42a report dated 26 August 2024.

<sup>24</sup> Paragraph 81 of Ms Beachen's Evidence in Chief dated 3 Sept 2024

that the application meets this limb of the criteria.

#### *Minimum Site Area*

69. As Ms Exley points out, the District Plan does not define what medium density is in terms of the District and this term is clearly contextual as what would be medium density in Gisborne would likely be considered low density in the metro centres such as Auckland and Wellington.<sup>25</sup> I also agree with Ms Beachen that density in itself is not an adverse effect and that I should be considering the effects that arise from the density proposed<sup>26</sup>. In saying this, it's clear to me from my reading of the Residential zone statement that the District Plan is seeking to manage density through a step through process, with higher density located closer and towards the Town Centre, lowering the density as you move away from the centre.
70. In this case the proposal is located within the General Residential Zone which does enable a range of residential typological responses including single detached, duplexes and potentially terrace style development at different levels of density. These are set out in Rule DD1.6.1(2). In this regard I agree with Ms Exley that what is currently proposed is above the minimum density standards that are provided for within the zone and this is further compounded by the decision to provide on-site car parking and a JOAL. This is not to be seen as a criticism, as while I acknowledge that the applicant could have come forward with a car free development, as I consider below, I believe the level of car parking and the need for a JOAL is appropriate for this form of development.
71. I also agree with Ms Exley that the increased density proposed is beyond what currently exists in the local receiving environment or what was anticipated within the General Residential zone<sup>27</sup> and therefore I find that the increased density, which will enable increased building form and associated bulk and massing impacts, will create unacceptable effects on both the adjacent properties (properties surrounding the dwellings/site) and the wider environment as a whole. As a result, I find that the application does not meet this limb of the criteria.
72. Along with this, I acknowledge that while the assessment criteria does not directly address the issue of the impacts on the streetscene, it's clear to me that the orientation, the single form of design response along the street, and the bulk and massing of these buildings will change the nature of streetscene in this location to a degree this is not consistent with the current existing environment, nor at a level anticipated by the District Plan.

#### *Site Coverage*

73. Turning to the issue of site coverage, if this is taken across the whole site, there was no disagreement between the planners that the site coverage control of 35% would be met. However, as currently proposed lots 10 and 11 do not meet this site coverage control and this in my view is a reflection of the increased building form that is enabled by the density proposed, as I have considered above. In my view, and this is where I also agree with Ms Exley, the increased density has enabled further site coverage beyond what was anticipated by the District

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<sup>25</sup> Paragraph 68 of Ms Exley's s.42a report dated 26 August 2024

<sup>26</sup> Paragraph 23.1 of Ms Beachen's Evidence in Chief dated 3 Sept 2024

<sup>27</sup> Paragraphs 68 to 90 of Ms Exley's s.42a report.

Plan. As a result, I find that the application does not meet this limb of the criteria.

#### *Yard Distances*

74. As with the issues of recession planes considered above, I accept (just as within my consideration of the recession plans) that the application meets the minimum setback control set out in the District Plan. I also accept the evidence of Ms Beachan and Mr Aikinson that the setback proposed off the common boundaries will enable sufficient distance to be achieved between the units in terms of sunlight, daylight, visual privacy and preventing overlooking effects from occurring on the adjacent residential properties. As a result, I find that the application meets this limb of the criteria.

#### *Infrastructure, Works and Services*

75. While I acknowledge the issues raised by a number of the submitters, including Mr Clancy, over the impacts of three waters and potential flooding issues, I am guided by the professional evidence in this regard. I note there was no disagreement between Mr Beale and Mr Ehlers that the site could adequately be serviced (three waters) and that the flooding annual stormwater issues could be adequately addressed by the suitable imposition of conditions of consent. I explored this with both of these witnesses through my questions at the hearing. As a result, I find that the application meets this limb of the assessment criteria.

#### *Consideration of Rule DD1.6.1(17) in the round*

76. In considering the assessment criteria under Rule DD1.6.1(17) in the round it is clear to me that the application fails to meet a number of the key assessment criteria. These include the building length, the visual dominance and bulk and massing impacts the proposal would have on the adjacent residential properties especially in Asquith Street that are the result of the increased density, site coverage and building location on site. As I've considered above, had the applicant sought to reduce the density and change the orientation of the building forms towards the location of Asquith Street I may have come to a different view. As a result, I find that the application fails to meet the assessment criteria under Rule DD1.6.1(17) and generate an unacceptable level of adverse effects on both the adjacent properties and the wider environment.

#### The infringements of the general provisions in Chapter C2

77. As considered above, there was no disagreement amongst the planners that these issues related to internal height to boundary (recession planes) infringements, site coverage (proposed lots 10 and 11) and vehicle access issues. Given that the issue surrounding site coverage has been addressed above within my analysis of Rule DD1.6.1(17) I do not propose to consider this issue any further.
78. In terms of the internal height relation to boundary infringements, as I have discussed above, given the applicant owns the site, they could give themselves consent for these infringements as an affected party if this was applied for as a Land Use consent. In saying this, I do accept, in

part, Ms Exley's argument that the increased density does allow for increased building form to come forward that led to the internal height relation to boundary infringements. These reflect the increased density proposed on the site. However, this could have been reduced with a car-free development which may have also involved in a different layout. I do not see any value in exploring this issue further because this is purely speculative, and I am considering the application in front of me based on the 6-step process I have set out above.

79. This leaves the issue of vehicle access and whether this is appropriate in this location. Setting aside for a moment the question of whether a car free development could have come forward, I do agree with the applicant's traffic engineer Mr Boaretto that some level of on-site car parking would be appropriate.<sup>28</sup> This leads me to explore the impacts of on-street parking, the nature of the JOAL, its width and whether it's the appropriate location to accommodate vehicle movements entering and exiting the site and their impact on the wider roading network. I will now consider these issues in turn below.

#### *Level of Car Parking*

80. Again, setting aside the issue that there are no car parking standards required for this type of development as a Land Use activity, Mr Boaretto suggests that 19 car parking spaces would be an appropriate level of on-site car parking based on 1.6 car parking spaces per unit, using NZTA's Tips and parking Related Research report 453 for suburban residential dwellings such as these<sup>29</sup>. 13 spaces are proposed, and this would generate a shortfall of 6 spaces, with these spaces being proposed to be accommodated on the street (Aberdeen Street and beyond). Mr. Beale also raised concerns about the lack of Courier, service and construction vehicle spaces on site and ability for such vehicles to manoeuvre on site.
81. In framing this discussion, it is important to refer back to the NPS: UD which has required councils to remove the need for car parking spaces from district plans, with the intention (in part) of reducing the cost of development by removing the costs associated with the provision of car parking. The clear implications of this policy approach are that either car parking will be provided 'on street' or the residential occupants of these dwellings will use active travel or public transport options, acknowledging there is a strong desire for active and public transport options. In this situation I accept the applicant has taken a pragmatic and realistic approach for a development such as this in this District by providing car parking and this is to be supported.
82. Mr Boaretto has undertaken a car parking study to show that there is sufficient capacity within Aberdeen Road to accommodate the shortfall of these six car parking spaces.<sup>30</sup> This accords with my own observations during my two site visits, and while I respect Mr Beale's experience of the District, I am guided by the professional evidence given to me through Mr Boaretto's car parking survey. As a result, I find there is sufficient capacity within the roading network to accommodate any further car parking needed which may be generated from this development.

#### *JOAL*

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<sup>28</sup> Paragraph 28 of Mr Boaretto evidence on Chief dated 2 Sept 2024

<sup>29</sup> Paragraph 28 of Mr Boaretto evidence on Chief dated 2 Sept 2024

<sup>30</sup> Paragraph 26 of Mr Boaretto evidence on Chief dated 2 Sept 2024

83. Mr Beale raised concerns about the width of the JOAL as this was below the Council's normal standards, which are set out at paragraph 171 of Ms Exley's s.42a report, and on-site vehicle maneuverability. In terms of the on-site vehicle maneuverability issue, I believe this was addressed through the applicant's (Ms Blomfield) right of reply, when she provided details of how this could be achieved. I accept this and find that this issue is now being addressed. However, I do wonder had the applicant reduced the density by one or two units any concerns around this issue would have also disappeared. It would have also provided on-site service vehicle space and visitor car parking spaces should that be required.
84. Turning to the issue of the width of the JOAL, I favour Mr Boaretto's evidence on this matter. I agree that a 5.45m wide carriageway with a 1.5m footpath is appropriate for the level of residential development proposed and will provide sufficient space for vehicles to pass each and for the separation of pedestrians and vehicles. This leaves its location and whether this would adversely affect drivers' sightlines for vehicles exiting the site. This was a concern expressed by Mr Beale, especially with the type of vehicles that are commonly used in the District.<sup>31</sup>
85. While I agree with Mr Boaretto's evidence on this matter, had I been of a view to grant consent I would have sought to ensure that double yellow lines would have been placed either side of the vehicle entrance on Aberdeen Road to prevent car parking in those areas and to ensure that the appropriate site distances could be achieved by vehicles leaving the site.
86. As a result, I do not find anything within the District Plan's general provisions (C2) that would prevent me from granting consent to this application, save for my concerns to ensure there are sufficient sight lines for vehicles exiting the site are achieved.

#### Contaminated Soils

87. As I have considered above, it appears to me that Dr Bull and Mr Strong had come to an arrangement by the end of the hearing that the issues of contaminated soils, its disposal and how this should be addressed in terms of the appropriate remediation protocol had been addressed and could be included in the set of conditions should I have been of a view to grant consent. I agree with this approach as I find there's nothing in terms of the contaminated soil issues and the consent required under the NES-CS that would prevent me from granting consent to this application.

#### Any outstanding subdivision matters, including any issues under s.106

88. As Ms Exley<sup>32</sup> points out, under Rule C10.9.6(9) consent is required as a Discretionary Activity of the application given the activity does not comply with the general standards for Controlled and Restricted Discretionary Activities under this rule. There are a number of subdivision provisions that are similar and have covered under these provisions in Rule DD1.6.1(17), including density,

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<sup>31</sup> Mr Beale's hearing notes dated 19 Sept 2024.

<sup>32</sup> Paragraphs 41 and 42 of Ms Exley's s.42a report

access and a number of other issues which have been covered above, acknowledging that subdivision consent would also be required as Discretionary Activity as it would not meet the District Plans minimum site area control.

89. Given where I have landed on the Land Use consent element (restricted discretionary activity) of this this application I do not see any benefit in covering all the issues under the subdivision section of the District Plan. Save to say I have not received any evidence that would have prevented me from granting the application under s.106 of the RMA.

Assessment of the relevant District Plan policy frameworks and the NPS:UD

90. I was provided a detailed assessment of the relevant objectives and policies by both planners which I found very helpful in considering this matter. It's clear to me that the objectives in the residential zones seek to provide for a range of different housing choices to meet the varied needs of the community (DD1.3.1) and seek to manage and protect amenity values (DD1.3.2). The supporting policies expand on these issues in greater detail and seek to ensure that the appropriate level of on-site amenity and amenity of adjoining properties is maintained and enhanced through design controls (DD1.4.2) and through the location and positioning of buildings on site and density (DD1.4.5). To achieve this outcome the plan imposes a range of methods including activity status and a different residential zoning approach, as discussed above, lowering density as it moves away from the town centre (DD1.5).
91. As would be expected both planners took different approaches on this issue with Ms Exley suggesting the application was inconsistent with a number of these objectives and policies with Ms Beachan taking a different view, suggesting the application was consistent with these. There were respective views and rationale for their views are set out in their evidence. Given where I have landed through my consideration above, I do not propose to go through these objectives and policies line by line as I don't think this would add any real value.
92. In saying this, it is clear to me that the application would be inconsistent with the objective to ensure that the proposal enhances or maintains the residential amenity values of the local environment and the residential properties in Asquith Street, especially in terms of building dominance and the level of density proposed. In this regard I favour Ms Exley's evidence. While acknowledging the plan provides for a range of different housing typologies as expressed in objective DD.1.31 this is supported by policy DD 1.4.2 that requires new buildings and structures to minimize, avoid and remedy their adverse effects on adjoining properties, which in my view has not been achieved in this scenario.
93. As a result, I find that the proposal is inconsistent with the objectives and policies set out in the residential section of the District Plan and I consider that the application would also be inconsistent with the subdivision section's objectives and policies. I note for completeness that the application would be consistent with the relevant objectives and policies relating to infrastructure provision, stormwater and servicing and contaminated land.
94. Turning to the issue of the NPS:UD and whether the level of densities proposed would form part of a well-functioning urban environment, and thereby enabling a range of different densities

and housing choice to come forward. While I accept Ms Beecham's arguments in this regard, I believe it would be inappropriate for me to use these provisions to 'override' the District Plan review process, which understand for Mr. McGhie is currently underway and these sort of outcomes should be subject to the normal plan-making and consultation processes.

The application in the round, positive effects and Part 2.

95. It is clear to me that while the issue of social housing did not dominate the discussion over the application, this is what was applied for and its provision would be a positive benefit to the District and would help achieve the purpose of the RMA (s.5). I acknowledge the positive benefits that further housing stock can provide to the district in meeting the needs of varied members of the community as set out in Objective DD1. 3.1 as suggested by Ms Beachen. However, these positive benefits do not outweigh the negative and adverse effects that are generated by the proposal as I have considered above.

96. Looking at the application in the round, as Ms Blomfield suggested I should do, I have come to the view, based on the reasons above, that the proposal would generate a level of unacceptable adverse effects on the environment, including the properties in Asquith Street and would not meet the test at s.104(1)(a). Turning to s.104(1)(b) I find that the application would be inconsistent with the objectives and policies that seek to ensure that development enhances or maintains the residential amenity values of the local environment (including the residential properties in Asquith Street), especially in terms of building dominance and the level of density proposed. For completeness, no s.104(1)(c) matters were brought to my attention save for Ms Exley's reference to the zone statements, which in many ways reinforced her own view on the application.

Having regard to Part 2 and acknowledging this is open to me, I am of the view that the matter has been adequately dealt with in the existing District Plan provisions and there is nothing in my view that a Part 2 assessment would add to my consideration of this application. In saying that I acknowledge the provision of social housing would be a positive benefit to the District and should not be underplayed.

97. I would like to conclude with the final comment that my consideration of the application was finely balanced and had the applicant sought a lower density outcome for the overall site, by reducing the units proposed by one or two and changing their relationship with the adjacent properties, especially on those in Asquith Street, I may have come to view that the applications before me were acceptable in effects and land use policy terms. I provide this commentary in the view of assistance of any appeal that may or may not follow my decision, any redesign and new application that the applicant may wish to explore.

## **DECISION**

98. In exercising my delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104B, 104C, and 106, of the RMA, I have determined that the resource consent application by NZHG Gisborne Limited ('the Applicant') for land use and subdivision consent for a 12 Unit residential development, site works, access (Joint owned

access lot: JOAL) and on-site carparking arrangements at 556 to 560 Aberdeen Road, Gisborne, be refused consent. .

99. The reasons for my decision have been set out in the sections above.

A handwritten signature in purple ink, appearing to read 'L Beattie', is positioned above the commissioner's name.

**Commissioner:** Dr Lee Beattie

**Date:** 2 Dec 2024